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STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

HELENA, MONTANA,

November 30, 1961

MONTANA GOVERNMENT
1515 E. CHURCH
HELENA, MONTANA 59601

The Honorable Donald G. Nutter
Governor of Montana
State Capitol Building
Helena, Montana

Sir:

Persuant to Section 41-1607, Revised Codes of Montana, 1947,
I am herewith transmitting the annual report of the Depart-
ment of Labor & Industry.

Very truly yours

J. Maurice Jones
Commissioner

JMJ:lct

1.
The Department of Labor and Industry came into being at the general election of 1950. The legislative assembly of 1949 passed an act submitting a referendum to the people for the separation of labor from the Department of Agriculture. It then set up a Department for Labor and Industry. This became fact at the general election of 1950. The next legislative assembly then stipulated duties to be performed by the Commissioner of Labor and Industry but the legislature did not give the Commissioner proper authority to enforce the duties of his office. The ultimate in a Department of Labor would be to have all agencies relative to labor incorporated into one office and under one head. Duplication of information and duties would be held to a minimum with a saving to the taxpayers of the state, as one man could do the work of several. As it exists today there are four departments namely; the Industrial Accident Board, the Unemployment Compensation Commission, the Apprenticeship Council and Office of Labor and Industry, all of which could be combined into one department.

In the past very little thought has been given to this. When the Workmen's Compensation Laws were enacted, they were administered by the Commissioner of Labor and Industry. In the subsequent years when this office was combined with the Department of Agriculture and then divorced from it, a hodgepodge of departments came to life, which really should be controlled through one office.

The federal government has also enacted laws pertaining to labor with which the several states have had to comply, creating uncoordinated offices. With the expected growth of industry in Montana and with the natural growth of the laboring force, it is incumbent upon the state to combine these departments and to streamline them into one efficient and more effective office.

In compiling this report, the commissioner has read the reports of his predecessors and some of the suggestions have been previously suggested in reports dating back as far as 1920. It seems almost incredible that past legislatures although repeatedly urged, have failed to take notice of these recommendations. Attention to these often repeated suggestions is long past due.

Relative to Collection of Wages.

During the short time the present commissioner has been in office, numerous complaints have been received from workmen throughout the state who have applied for assistance in the collection of past due wages. This does not apply to any one line of industry or to any one locality in the state. The laws specifically states when wages should be paid but since the legislature has not given the Commissioner of Labor sufficient authority to enforce the law, he is powerless to give authoritative assistance, although in every case which has come to his attention, every effort has been made to settle the case satisfactorily and a small percentage of the number of cases have been settled with tangible results. Because of this lack of authority, it has happened that the complainant has not been satisfied with the efforts of the commissioner and has gone away feeling that he has not been given a fair deal and that discrimination has been practiced against him. There are however those who submit false claims hoping to collect for work they have not earned. These cases are very few.

More assistance along the collection lines could and should be given by each County Attorney. In a large percentage of the claims submitted to the office of Labor and Industry by the claimant, he has sought advice from his County Attorney. These attorneys do not give the laboring man the consideration due him when he asks for aid in collecting wages. Many of them ask as high as 25% or 33 1/3% of the money due as a fee, which is much more than a laboring man can afford. He should not be forced to pay any man to collect his wages. County Attorneys also often show a laxity in the prosecution of an employer who has paid the employee with a bad check. The attitude of most County Attorneys seems to be one of indifference and again the claimant thinks he is not getting a fair deal from his elected officials.

There still exists today the employer who cheats or lies or does everything possible to defraud the employee of his wages. To circumvent the law he has the employee sign a contract with him which stipulates certain conditions of work. If the employee does not follow the contract to the letter, a copy of which is not given him, it is deemed broken and he is at the mercy of the employer for his wages. These employees are generally drifters or persons who are down on their luck. Claims on these employers are few because this class of people feel they cannot get a fair deal where ever they go. Those who have consulted the commissioner have been destitute.

The law does give the commissioner authority to administer oaths, to examine witnesses under oath and to subpoena witnesses for hearings. All cases could be settled by these hearings but the cost to the state would be too great.

There is very evident need of labor legislation to insure the workman leaving his employment voluntarily or otherwise, of prompt payment of his wages. The law stipulates a 5% penalty for liquidated damages to be added if wages are not paid within five days. This penalty is too small to have any effect on employers who are determined to cheat their employees. The five day lapse of time usually works a hardship on the employee who needs his money for his livelihood and who should not have to be subjected to this inconvenience. It is recommended that a fine of \$5.00 for every twentyfour hours of delay in payment of wages be assessed the employer. It is also recommended that the Commissioner of Labor and Industry be given the authority to attach tangible possessions of the employer and if payment is not made within five days, the same shall be sold at sheriff's sale to satisfy the claim. This attachment to supercede all other liens. It is suggested that a fine of \$100.00 be assessed County Attorneys who fail to prosecute in cases of this kind.

There were 128 wage claims filed with this Office from November 30, 1960 to November 30, 1961, totaling \$39,036.40, ranging from \$4.00 to \$6,219.99, of these cases 37 were settled for a total of \$5,265.12. There were 11 claims totaling \$1,650.91, pending from November 30, 1959 to November 30, 1960. Out of the 128 cases filed, 5 were referred to various County Attorneys. After conferring with this office 9 employees took their cases to attorneys of their own choice for civil action. There were 17 cases disallowed which had no basis for a claim and 6 cases which were turned over to the Wage, Hour & Public Contracts Division of the U. S. Department of Labor.

The Commissioner traveled 13,847 miles from December 1, 1960 to November 30, 1961.

Relative to the Collection of Wages the following are examples of Claims submitted.

A Case in Havre:

An automobile agency was incorporated under the laws of Montana directly after the war. For several years it enjoyed a very profitable business. During this time it employed several men as mechanics and salesmen. A few years ago it began to go behind. All the employees quit except one who stayed on at the request of the officers of the corporation. This one employee worked until his wages amounted to \$600.00 which he was unable to collect. The officers kept promising him the money but never paid. He was forced to seek employment elsewhere. The commissioner made his investigation and was told by the Vice resident of the corporation the employee would be paid in less than thirty days. The employee is still to receive his wages.

The County Attorney was consulted but was non-committal. He seemed to have an indifferent attitude and wanted nothing to do with the case. He had asked the employee a fee amounting to one third of the wages. The Attorney General's office was also consulted but without much success, however the Commissioner was told to look into the corporation to see if a partnership existed. This was done but the findings have not been submitted for legal advice.

A Case in Cut Bank.

A claim was submitted from Glacier County. The employee had been paid with bad checks and each check carried a notation from the bank NSF. The County Attorney would do nothing. The employer promised to pay when approached by this office. The employee when contacted recently had received a little more than half of the money he had coming.

A Case in Troy.

On May 16, an urgent appeal for help in collecting past due wages was received in this office. Upon investigation one employer claimed he did not owe the claimant any money. He maintained a post yard in which he purchased posts from loggers and sold them to truckers. He said the trucker, which he sold to was the employer of the claimant. Several other people contacted, among which were the chief of police and the ex-night officer, told the Commissioner the claimant had money coming from someone. He had been seen working early in the morning and late at night in the post yard. The trucker has not been contacted although the Commissioner has made several trips to Troy with that purpose in mind. The County Attorney was reluctant to enter the case or give aid to this office. To date this case has not been settled and efforts will not cease until it is.

Relative to Child Labor.

Five or six decades have passed since the legislative assemblies of the several states enacted laws protecting youth from unscrupulous employers. The State of Montana passed its child labor laws during the session of 1909 and subsequent legislatures have delegated the Department of Labor and Industry to administer them. Since the enactment of these Child Labor Laws nothing has ever been done to amend or revise them. Revision of these laws would be for the best interests of the child and the employer. The conflicting opinions handed down by the Attorneys General make it extremely difficult for this office to administer these decisions.

Vol.23, No. 136 - Opinions of the Attorney General.

Held: The division of labor of the department of Agriculture, Labor and Industry should not issue an age certificate to anyone under the age of sixteen years regardless of the nature of the employment for which such certificate is sought.

Vol. 20, No. 68 - Opinions of the Attorney General.

Section 10-203, Revised Codes of Montana 1947, requires the commissioner to compile and preserve in his office, from reports made to him by the county superintendent of schools, as provided by law, a full and complete list of the name, age, date of birth, and sex of each child, and the names of the parents or guardians of each child, under the age of sixteen years. Section 10-204 requires every child upon attaining the age of sixteen years, who seek employment, to obtain an certificate from the commissioner, which certificate must be presented to the employer before such child is permitted to work. This section requires the employer, upon receiving such certificate, to countersign the same and return to the commissioner, who shall keep it on file in his office. It also prohibits any employer from employing or permitting to be employed in any of the occupations prohibited by section 10-201, any child without such certificate showing such child to be at least sixteen years of age. The statute provides a penalty for the violation of its provisions. It would appear, therefore, that the age certificate is, in effect, a work permit.

The intent of the legislature that no child shall be employed regardless of age or sex unless he obtains a certificate from the commissioner showing him to be at least sixteen years of age, is clear and unambiguous. Likewise, it is clear the legislature intended to and did place upon the commissioner the duty and authority to enforce all laws relating to the employment of children. And further, the Division of Labor, under the statutes has jurisdiction in the enforcement of all laws relating to employment of minors, regardless of age or sex.

It is therefore my opinion it is the duty of the Division of Labor to issue age certificates to minors seeking employment, regardless of age or sex of such minor, and regardless of the nature of the employment sought.

It may be questioned whether an age certificate is required when the employment sought by the minor is not one of those prohibited by Section 10-201. However it may be noted Section 3098 requires any child to obtain (make application for) such certificate must be presented to the employer with whom such child may seek employment. The statute permits the employment of a child in those occupations or employments mentioned in Section 10-201 only when such certificates shows such child to be at least sixteen years of age.

(1) It is the duty of the Division of Labor to issue age certificates to all minors, regardless of age or sex, who make application thereof. Also, (1) The Division of Labor has the jurisdiction in the enforcement of all laws relating to the employment of minors, regardless of age or sex.

Opinion of the Attorney General, November 8, 1961.

I concur in your opinion that the employment of a fourteen year old minor as a janitor and package boy in a grocery store after school hours and on Saturdays is not prohibited by Section 10-201, Revised Codes of Montana, 1947.

The decision of our Supreme Court in Shaw v. Kendall, 114 Mont. 323, in 1943 has been the foundation of subsequent opinion interpreting Section 10-201, supra. Among them are opinions holding that a minor under sixteen may be employed to assist in loading or unloading delivery trucks and may set pins in a bowling alley.

Nor, in my opinion, does Section 75-2902, Revised Codes of Montana, 1947, prohibit the described employment situation. Section 75-2902, supra, states that no child under sixteen years of age shall be in employment except under specified circumstances during the school term and while the public schools are in session.

This is followed by a proviso stating "nothing in this act shall be construed to interfere with the employment of a child during the time school is not actually in session." The inconsistent provisions of that Section, in my opinion may be avoided in the instant case, by giving literal effect to the word "actually" in the quoted proviso.

The statute absent the proviso is complete in itself, although inconsistent, and its application is universal insofar as the employment of those under sixteen during the school year is concerned. The quoted phrase must be given effect, if possible. The statute first set out that the time for its application is "while the public schools are in session." If the provision is not to be useless and redundant, it must explain or clarify what has been stated before it. The only way that such effect is produced is to interpret it as excepting from the general operation of the statute the times during the session other than times during which school attendance is required.

For the past several years, the Federal Department of Labor has been conducting hearings to use their findings to improve its Child Labor regulations. They have used testimony from men of industry and labor who are interested in this problem. The existing standards of the Federal Department of labor are very specific in naming the types of work different age groups may or may not perform. They leave no doubt in the employer's mind as to the specific work each child may do. It is recommended that a committee be appointed to study Montana's Child Labor Laws using the Federal Child Regulations as a guide, and to recommend to the next legislative assembly revisions to our present laws.

The number of age certificates issued from November 30, 1960 to November 30, 1961 were 823, of this total 549 were issued to males between the age of 18 and 21, there were 274 issued to minors between the age of 16 and 18.

There have been 662 accident reports from the Industrial Accident Board for minors 19 years and under reported to this office, these in turn are forwarded to the Wage, Hour and Public Contracts Division of the U. S. Department of Labor, Seattle, Wash.

Relative to Age Certificates.

The Commissioner of Labor has learned from men who deal in alcoholic beverages, that false birth certificates can be purchased by minors. For \$25.00 a minor can purchase these certificates so he is able to purchase liquor two or three years before reaching his majority.

Section 10-203, Revised Codes of Montana states it is the duty of the Office of Labor & Industry to compile and preserve a full & complete list of the names, date of birth, and sex of each child in the State of Montana. This list is compiled from reports made to this office by the County Supt. of Schools of each county and shall be the official record of the age of each child of the state. If this office were authorized to issue Identification Cards, with the stipulation that no other would be recognized, this practise of securing false cards could be stopped. This could be discussed by the committee for the revision of child labor laws.

Registration of Contracts.

The enforcement of the prevailing wage law is extremely difficult. The Commissioner has no knowledge of any contract let for building or construction work by any county, city or other subdivision of state government. These contracts come under the prevailing wage law, Section 41-701, Revised Codes of Montana, 1947. There are violations but they come to the attention of this office, long after the contract is finished, in the form of wage claims. It is recommended that each county, city, etc. be required to file a copy of each contract let, for any purpose, with the office of Labor & Industry. The enforcement of the law would be much easier besides providing valuable statistical data.

In the negotiation of collective bargaining agreements between unions and employers, arguments arise which at times seem impossible to resolve. Work stoppages and strikes often occur. The Office of Labor & Industry has no record of contracts entered into between unions and the employers so when there is a strike or stoppage this office has no knowledge of the dispute. If such knowledge were known, the Commissioner feels the office could take a more active part in the settlement of these disputes. It is recommended that all contracts between employer and employees be filed with the Office of Labor & Industry.

Relative to the Prevailing Wage Law.

A Case in Baker.

The City of Baker voted a bond issue for pavement, curbs and gutters. The project covered every street in the city and was divided into two parts, curbs and gutters in one, pavement in the other. The low bidder on the curbs and gutters was a contractor from Dickinson, North Dakota. When he asked about the prevailing wages in the county, he was informed that the farmers paid from \$1.25 to \$1.75 per hour. He paid those wages for the duration of the contract.

The Commissioner knew nothing of this project and while attending a pre-contract conference between unions and contractors before the letting of the Yellowtail Dam in Billings, he was approached by the business representative of the cement finishers and brought up to date on the Baker job.

In his investigation he found that the men who lived in Baker would not work for this contractor because of the low wage scale. A prevailing wage had been set in Fallon County, by five other contractors at \$2.20 per hour. The contractor brought men from North Dakota to do the work. The Mayor and City Attorney were contacted and after some discussion the Mayor said he would comply with the law, \$500.00 was withheld from the final payment to the contractor as liquidated damages to be credited to the proper funds of the city.

The low bidder on the pavement was also from North Dakota. The law was explained to him a few hours after receiving the contract, he complied.

The Commissioner discovered a similar case in Lewistown. A sewer job was being done for the city. The contractor was paying far below the scale he should have been paying. When approached and an explanation of the law given he was willing to comply. The Mayor had just been elected and claimed he knew nothing of the law, but informed the commissioner it would be complied with in future contracts.

Relative to the Eight Hour Law.

The Eight Law, which was passed by a vote of a referendum at the general election in 1936, is the most abused section of the State Constitution. The worst violators are the state and the contractors who are building the roads and bridges of the new highway system. The one redeeming feature is the overtime pay. During the year there have been three violations reported, one each in Billings, Baker and Fort Benton. All were settled.

Relating to the Eight Hour Law.

A complaint was received stating the S-quire Cafe in Billings was working its waitresses more than eight hours a day. The manager denied this and since the claimant did not want her name used the case was dropped.

The City of Baker was requiring its policemen to work eighty-four hours a week. When told it was illegal they complied with the law.

A communication was received by this office stating that ChoctEAU County was working its ferrymen longer than the statute allowed. This was found to be so and when confronted on the issue the Commissioners of the County agreed to comply. However they still work the ferrymen fiftysix hours a week.

On June 1, 1961, the Commissioner accompanied the Governor to Galen for a hearing scheduled between the Board of Examiners and the employees of the State Hospital. Letters had been received by the Board leading them to believe labor trouble existed. The hearing lasted from 2:00 P.M. to 3:30 P.M. taking testimony from interested persons. At the conclusion a committee was appointed, consisting of the Commissioner of Labor, a Deputy Attorney General and the Superintendent of the Hospital, to investigate and recommend to the board procedure with which an election could be held to determine what union would be the bargaining agent for the employees employed at the hospital. In the investigation a valid contract, signed by the Secretary of State, the Attorney General and the former Governor, was found to exist. The Commissioner asked an opinion from the Attorney General as to the status of the state in this case. To date he has received no reply and no election has been held.

On November 9, 1961, the Commissioner went to Great Falls to investigate a strike or walkout staged by the electricians on the missile bases. A Report of this investigation was submitted to the Governor on the Commissioners return to Helena.

The following table lists a few of the wage rates in the State.

Aluminum Workers	
Columbia Falls	\$2.33 to \$3.19 per hour
Bakers	
Great Falls	\$2.725 to \$3.13 per hour
(Bakers Helpers)	1.65 to 2.10 " "
Bartenders	
Anaconda	\$17.00 per day
Billings	17.50 " "
Missoula	17.00 " "
Miles City	15.00 " "
Butchers	
Great Falls	
(Men)	\$2.62 per hour
(Women)	1.7825 per hour
Carpenters	
Montana State Council	\$3.30 to \$3.70 per hour
Northwestern Council	3.47 per hour
Apprentices, 1st year	2.735 " "
Shop Scales	3.09 " "
(Apprentices, 1st year)	2.32 " "
Dry Cleaners	
Great Falls	\$1.34 to \$1.72 per hour
Missoula	1.11 to 1.36 " "
Helena	1.23 to 1.79 " "
Electricians	
Telephone Employees	
Journeymen	\$23.60 per day
Apprentices	12.10 to 19.40 per day
Montana-Dakota Utilities	1.77 to 3.24 per hour
Hod Carriers & Laborers	
Billings	\$2.72 to \$3.41 per hour
Great Falls	2.49 to 3.04 per hour
Hotel & Restaurant Workers	
Butte	\$1.25 to \$2.08 per hour
Bozeman	5.50 to 12.00 per day
Helena	7.75 to 14.05 " "
Kalispell	1.00 to 1.50 per hour
Miles City	7.40 to 13.00 per day

Lathers	
Billings	\$3.375 per hour
Laundry Workers	
Great Falls	\$1.31 to \$1.65 per hour
Helena	1.17 to 1.68 " "
Missoula	1.08 to 1.54 " "
Mine, Mill & Smelter	
East Helena	\$18.17 to \$21.11 per day
Great Falls	17.97 to 21.54 " "
Butte	17.48 to 20.60 " "
Anaconda	19.97 to 20.52 " "
Oil, Chemical & Atomic Workers	
Billings	\$2.40 to \$3.495 per hour
Ornamental Iron Workers	
Billings	\$3.70 to \$3.875 per hour
Painters	
Great Falls	\$3.25 to \$6.50 per hour
Plumbers	
Missoula	\$4.00 per hour
Sugar Refinery Workers	
Missoula	\$1.51 to \$2.88 per hour
Hardin & Sidney	2.195 to 2.75 " "
Teamsters & Warehousemen	
Butte	\$2.50 to \$2.795 per hour
Great Falls	1.87 to 2.50 " "
Typographical Workers	
Butte	
(Journeymen)	\$3.4167 per hour
(Apprentices)	% of Journeyman's wages
Great Falls	
(Journeymen)	\$3.414 per hour
(Learners, 1st two wks)	1.50 " "
(After 2nd wk.)	15.00 per day

Budget of the Department of Labor & Industry.

There are two employees in the department , the Commissioner and Secretary. for the biennium this department requested \$24, 120.00. It received \$23,916.00 of which \$19,200.00 will go for salaries, \$4,716.00 will be left for the operation of the department. No money was asked for the maintainance of the state car or for out of state travel. The Commissioner feels this not not enough but will run the office to the best of his ability during this biennium on the amount appropriated. On July 1, 1961, \$953.80 reverted back to the general fund.

The Commissioner has received several invitations to attend conferences of State Labor Commissioners. Since there has been no appropriation for out of state travel all have been refused. The Commissioner feels that attendance to at least one of these is necessary in order that exchange of ideas can be had with Commissioners of other States in order to develop a better office. He is contemplating attending the one to be held in Seattle, Washington commencing on May 23, 1962. To do this he is paying his own expenses.

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